

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 362 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHANDUBHAI GOPALBHAI

Versus

STATE OF GUJARAT

Appearance:

MR BJ JADEJA for Petitioners

MR. MA BUKHARI, ASST. GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 10/12/97

ORAL JUDGEMENT

1. No one is present for the petitioners. Mr. Bukhari, learned Asst. Government Pleader appears for the respondent No.1.

2. Heard learned Asst. Government Pleader and perused the petition and the documents annexed therewith.

A very short issue arises for consideration in this case. The petitioners are all heirs and legal representatives of one Gopalbhai who died on December 18, 1980 as per the averments made before the competent authority and Additional Collector, Urban Land Ceiling, Ahmedabad in their application before him dated 21.4.1988/10.5.88 in the proceedings out of which the present petition has arisen. The said Gopalbhai had filed a declaration under Section 6(1) of the Urban Land Ceiling Act before his death. As per declaration he held final plot No.82 admeasuring 1845 sq.mts at Vejalpur Moza Vejalpur, District Ahmedabad and another piece of land Final Plot No. 15 at Vasna, Sub district Ahmedabad admeasuring 1020 sq.mts.

3. In the first instance by order dated 6.3.82 competent officer held that the petitioners were not holding land in excess of ceiling limit after a draft statement under Section 3(8) of the Act was published on 28.11.1981. Thereafter the State Government exercised its revisional jurisdiction and issued a show cause notice to the petitioners and declared 1893 sq.mts. of the land held by the petitioners as surplus land. Petitioners challenged the said order of the Government by way of Special Civil Application No. 3920 of 1984 before this Court. Before the Court, learned counsel for the respondent-State made a concession that the Government's order under Section 34 of the Act declaring 1893 sqmt. of land as excess land shall be treated as cancelled and the representation made by the petitioners shall be considered on merits. In view of that statement, the said order of the State Government was cancelled and the matter was remanded back to the competent authority for fresh enquiry. Thereafter the competent authority respondent NO.1 vide his order dated 21.11.1988 held that the petitioners were entitled to hold land up to one ceiling unit only and declared 1049 sq.mts. of land as excess land. The said order was challenged in appeal before the Urban Land Ceiling Tribunal which appeal was dismissed by order dated 27.8.1990. The petitioners challenges the said orders, in this petition.

4. Petitioners had raised two contentions before the competent authority as well as the appellate authority. Firstly that as on the date, when the matter of holding land under ULC Act was being considered, the original holder of the land Gopal had died and the property had vested in the heirs and they are all to be considered as separate units for the purpose of determining the ceiling in accordance with their share in the property assuming

the property to be self-acquired property of Gopal. It was also pleaded by the petitioners that the land in question was property of Hindu Undivided Family consisting of Gopal and members of his family who acquired the said property by joint effort and therefore each coparcener having an independent right in the property, all members are entitled to separate unit.

5. The first contention was rejected inter alia on the ground that the ceiling limit under the Urban Land Ceiling Act has to be determined with reference to the date of the commencement of the Act in the particular area and with reference to that date only the final determination is being made of the land held by a person as on such date. The fact that original holder of the land as on the date of the commencement of the Act had expired thereafter would not make any effect on the determination of surplus land in the hands of the holder at the commencement of the Act, for which the authorities relied on two decisions of Supreme Court in *Raghunath Laxman Wani v. State of Maharashtra and others* reported in AIR 1971 SC 2137 and *Bhikoba Shankar Dhumal v. Mohanlal Punchand Tathed* 1982 SC 865. This part of the order in my opinion is not liable to be assailed on any ground whatsoever and in fact the order has not been challenged in regard to this part of the finding and in my opinion rightly so.

6. The only contention raised in this petition is that the property in question was joint Hindu family of which Gopalbhai was a Karta and the adult members of the Joint Family ought to have been considered as a separate unit for the purpose of determining ceiling area which each unit was entitled to retain. This contention of the petitioners have been rejected by both the authorities on the ground that no evidence has been produced before the authority concerned regarding the claim of the petitioners that the property was joint family property. This part of the finding that no evidence was produced in that regard has not been stated to be wrong. Thus when finding of above non-production of evidence on a question of fact remains unchallenged, it cannot be said that authorities committed any error much less an error apparent on the face of record, which only can be interpreted with by issuing a writ of certiorari. No question of want of jurisdiction arise.

7. Moreover, I find from the perusal of the averments made in the petition, and the averments made by the petitioners in their representation before the competent authority as well as before the appellate

Tribunal, that the petitioners are seeking to make out entirely new case in this petition which was neither pleaded nor any material in that regard was produced before the authorities under the ULC Act. Before the competent officer it was specifically pleaded by the petitioners that the two properties in question, namely, Survey No. 55/3 at Vejalpur admeasuring 2630 sqmts which has been finally resulted in Final Plot No. 82 admeasuring 1845 sq.mts. and Survey No. 110 at Vasna admeasuring 1315 sqmts., which has been reduced to final plot No.15 admeasuring 1020 sq.mts., in which petitioner's father had only 1/5th share were purchased by petitioner's father Gopal, through funds arising out of joint efforts of Gopal and his family members who were doing manual labour and marketing utensils in exchange of old clothes. However, in this petition filed in this Court it has been pleaded for the first time that land which was standing in the name of deceased Gopal was purchased by Gopal's father Umedbhai along with his son Gopalbhai Umedbhai vide sale deed dated 2.7.1934, a typed copy only of which was placed on record as Annexure B to the petition. Obviously, in respect of original plea before the competent officer and appellate authority that property was acquired by deceased Gopalbhai, through joint effort of himself and members of his family and in fact before the competent authority it was specifically stated as noticed by him that according to the petitioners, the property was purchased by Gopal, the plea which has now been raised in this petition is that the property was purchased by father of Gopalbhai. This was apparently not the case before the authorities under the Act.

8. The petitioners have not led any evidence in support of their plea that there exist a family which was joint in food and living and by their joint efforts of members of that family the property was acquired. These both are the questions of fact depend upon their proof through evidence to be led in that regard. It is not the case of the petitioners that they have led any evidence which was not considered by the competent officer. Mere pleading cannot be taken to be proof of the facts alleged. Therefore to the extent the orders record that the petitioners have not led any evidence in support of their plea that the property is property of joint family, cannot be said to be suffering from any error apparent on the face of record.

9. Whether the property was ancestral on the allegation made by petitioners before the competent officer is a question of fact which depended upon the

proof of averments made before the competent officer for treating the property to be joint Hindu family property. The finding that no evidence has been led as well as the final conclusion whether the petitioners have been able to prove their case are both being finding of fact are not liable to be interfered with in exercise of extraordinary jurisdiction under Article 226 as a matter of course by examining the issue as an appellate court, nor the petitioners are entitled to make out altogether a new case requiring investigation into the facts which were not pleaded before the competent officer as well as the Tribunal to call for interference in this petition.

10. Accordingly, this petition fails and is hereby dismissed. Rule is discharged, there shall be no orders as to costs. The order as to interim relief stands vacated.

(Rajesh Balia,J)

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